

EXHIBIT 68

Highly Confidential - Subject to Further Confidentiality Review

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION
4

5 -----x
6 IN RE: NATIONAL PRESCRIPTION) Case No.
7 OPIATE LITIGATION) 1:17-MD-2804
8 APPLIES TO ALL CASES) Hon. Dan A. Polster
9 -----x

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11
12

VIDEOTAPED DEPOSITION OF GARY L. BOGGS

13

WASHINGTON, D.C.

14

THURSDAY, JANUARY 17, 2019

15

9:07 A.M.

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19
20
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22

23 Pages: 1 - 429

24 Reported by: Leslie A. Todd

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1 A I do not.

2 Q And then it goes on to say: "'We have
3 to investigate things in a different manner than a
4 company that can act on a suspicious order. We
5 have to meet constitutional and legal
6 requirements. They don't have to sell to
7 someone,' Boggs said. 'They have a moral
8 obligation as keepers of powerful and dangerous
9 substances to make sure those substances are used
10 for legitimate medical purposes.'"

11 Do you have any reason to dispute having
12 made those statements?

13 A I do not.

14 Q Looking at the context of these
15 statements and in terms of what this article is
16 reported to be about, would it be fair to say that
17 you as a DEA agent at the time were expressing
18 dissatisfaction or frustration with certain
19 distributors as to their failure to maintain
20 effective controls to prevent the diversion of
21 controlled substances?

22 MR. STANNER: Object to the form.

23 MR. SATIN: And I -- objection. I'm
24 objecting pursuant to Touhy.

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1 I don't quite understand the question.
2 You can ask him about what he said but not why he
3 said it or what was going on at DEA at the time
4 that may have informed this statement.

5 MR. HAWAL: Counsel, this -- this is --
6 he clearly made a public statement, and I believe
7 that the Touhy requirements allow me to explore
8 the circumstances of this public statement. I
9 don't understand how you can object in the context
10 of what he says here.

11 MR. SATIN: So I -- I had a conversation
12 with the AUSA, Mr. Bennett, on this subject, and
13 while it's permissible to ask about the fact of
14 those public statements, but what is behind those
15 statements, the circumstances, the motives, the
16 background material, that is off-limits. That's
17 an issue you'll have to take up with the
18 government.

19 MS. KASWAN: We've been going quite a
20 while. Can we take a break?

21 MR. STANNER: The witness is fine, so
22 we're happy to keep going. Obviously, people
23 should feel free to use the restroom.

24 MS. KASWAN: I could use a break.

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1 THE VIDEOGRAPHER: The time is
2 11:24 a.m. We're going off the record.

3 (Recess.)

4 THE VIDEOGRAPHER: The time is
5 11:41 a.m., and we're back on the record.

6 BY MR. HAWAL:

7 Q Mr. Boggs, continuing on with the
8 USA Today article that we've been discussing,
9 there's another statement that is attributable to
10 you, and it says: "'You can have the ostrich
11 approach. You can stick your head in the sand and
12 ignore blatant signs,' Boggs said."

13 And then it goes on to say: "This
14 company is sitting in a state that has been the
15 epicenter of the problem. It's no secret that the
16 drug of choice is oxycodone. I don't think you
17 have to be that strong of an investigator to put
18 two and two together," close quote.

19 Are those statements that you would have
20 made?

21 MR. STANNER: Object to the form of the
22 question, the word "attributable."

23 THE WITNESS: I -- I believe that
24 they're correct, yes.

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1 BY MR. HAWAL:

2 Q Were these -- were these the kinds of
3 statements that are attributive -- attributed to
4 you in this article that you would have been
5 generally making during this frame?

6 MR. STANNER: Object to the form of the
7 question.

8 BY MR. HAWAL:

9 Q In 2012.

10 MR. STANNER: Same objection.

11 THE WITNESS: I don't know that I
12 understand your question when you say --

13 BY MR. HAWAL:

14 Q Well --

15 A -- "generally making."

16 Q Well, were these the kinds of statements
17 that you were generally making to individuals who
18 would have been inquiring about the opioid crisis
19 and certain distributors not living up to their
20 obligations under federal regulations?

21 MR. SATIN: Counsel, I'm sorry to
22 interrupt. Are you asking about statements he was
23 making --

24 MR. HAWAL: In the public domain.

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1 MR. SATIN: -- in the public domain?

2 MR. HAWAL: Yes, sir.

3 THE WITNESS: This is a statement I made
4 in this particular article. I don't recall every
5 statement that I made during that time frame.

6 BY MR. HAWAL:

7 Q Let me ask you this: When you left DEA,
8 did you get some type of clearance from the DEA to
9 go work for McKesson?

10 A I believe that I was interviewed by
11 McKesson counsel on -- on that.

12 Q Well, I'm not so concerned about
13 McKesson's counsel. But did you seek clearance
14 from the DEA to go work for a distributor?

15 A I don't recall doing that, no.

16 Q So you don't have any type of written
17 agreement with the DEA that allowed you to go work
18 for McKesson?

19 A I do not.

20 Q Okay. So as far as you know, there were
21 no restrictions placed upon you by the DEA as to
22 what you could or could not communicate with
23 McKesson about as it relates to your pre, or --
24 prior employment with the DEA?

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1 MR. STANNER: Object to the form of the
2 question.

3 THE WITNESS: I don't have any
4 restrictions that I'm aware of, no, other than
5 what we're talking about today.

6 MR. STANNER: Mr. Hawal, I think someone
7 on the phone is complaining about the microphones.

8 Can the people on the phone hear us?

9 (UNIDENTIFIED SPEAKER): It sounds like
10 the mics have been turned down a little bit. I
11 don't know if there's a way to adjust the volume.
12 We were fine before the break.

13 MR. STANNER: I think we just tried to
14 do that. Has there -- have you -- have you
15 noticed any change? We just tried -- we just
16 changed the volume.

17 (UNIDENTIFIED SPEAKER): No, not yet.

18 THE VIDEOGRAPHER: Do you hear anything
19 better now?

20 (UNIDENTIFIED SPEAKER): Yes. Much
21 better. Thank you.

22 MR. STANNER: Great. If people on the
23 phone could mute their phones, that would be very
24 helpful. Thanks.

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1 (Plaintiffs' Exhibit No. 7 was
2 marked for identification.)

3 BY MR. HAWAL:

4 Q Mr. Boggs, I'm handing you what has been
5 marked as Plaintiffs' Exhibit 7, which is a
6 different article but also from 2012. And this
7 was published in Bloomberg Businessweek. The
8 title of the article is "American Pain: The
9 Largest U.S. Pill Mill's Rise and Fall." "There
10 were 335 million prescriptions for painkillers
11 written in 2011. Is it any wonder some of them
12 were from criminals?"

13 And my question is, do you recall being
14 interviewed by someone from Bloomberg Businessweek
15 at or around this time where you made certain
16 statements that were -- that appeared in this
17 article?

18 A I do not.

19 Q I'm going to put on the screen a
20 paragraph that has certain statements that are
21 attributable to you. And it says: "Gary Boggs,
22 Special Agent with the DEA's Office of Diversion
23 Control says, 'The cases that the DEA has brought
24 in recent years involved wholesalers knowingly

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1 making enormous sales to customers that were
2 per se in violation of DEA rules. The notion put
3 out by HDMA that somehow or another the DEA is not
4 providing essential information to them is simply
5 not accurate,' says Boggs. 'It's a smoke screen.
6 It's a step out of desperation.'"

7 Do you remember making such statements
8 in 2012?

9 MR. STANNER: Object to the form,
10 compound. Vague if you're referring to the
11 quotation on the preceding sentence.

12 MR. HAWAL: Yes.

13 BY MR. HAWAL:

14 Q Do you -- do you remember making such
15 statement?

16 MR. HAWAL: I'm sorry?

17 MR. STANNER: I'm sorry, you said,
18 "Yes." Do you mean -- are you referring just to
19 the quotation --

20 MR. HAWAL: Yes.

21 MR. STANNER: -- or to the entire --

22 MR. HAWAL: Yeah, quotations.

23 THE WITNESS: I -- I don't recall making
24 them.

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1 BY MR. HAWAL:

2 Q Were these statements that were
3 consistent with statements that you would have
4 been making at that time in the public domain?

5 A It appears a statement that I made for
6 this article.

7 Q Okay. And in -- in June of 2012, were
8 you still a DEA employee or had you retired as of
9 that time?

10 A I retired at the end of that month.

11 Q Okay. I'm going to hand you another
12 exhibit. I think we're at Exhibit 8.

13 (Plaintiffs' Exhibit No. 8 was
14 marked for identification.)

15 BY MR. HAWAL:

16 Q With regard to the statement that was in
17 the Bloomberg publication, you referred to HDMA.
18 HDMA is the trade association for pharmaceutical
19 wholesalers like McKesson and Cardinal and
20 AmerisourceBergen?

21 A It was formerly HDA -- or HDMA. Now
22 it's HDA. Yes, it is.

23 Q And you have attended HDMA meetings?

24 MR. SATIN: Are you asking about since

5 A I don't believe I have, no.

[illegible]

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 BY MR. HAWAL:

9 Q Well, would you agree with me that it
10 would be difficult to make improvements if one
11 didn't go back and determine where improvements
12 were necessary or needed?

13 MR. STANNER: Object to the form,
14 misstates the testimony.

15 THE WITNESS: I -- I think in some times
16 that's an opportunity to do that. I think other
17 times you have to take into consideration that,
18 you know, what may or may not have led to some
19 issues that, you know, many years ago was for a
20 different time and different type of diversion
21 scheme where the red flags may have been different
22 than what they are today.

23 So I want to make sure that I'm not
24 looking at things that are no longer valid in

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1 today's environment, so I'm looking more forward
2 and what is today's thread, if you will, of
3 diversion, and how best that we can identify that.
4 Not necessarily looking retrospective to schemes
5 that are no longer a relevant factor.

6 BY MR. HAWAL:

7 Q Well, you would agree generally that if
8 one doesn't look at past mistakes, one won't learn
9 from their past mistakes. Is that true?

10 MR. STANNER: Object to the form of the
11 question.

12 THE WITNESS: I think that that's
13 generally a -- a solid thing.

14 (Plaintiffs' Exhibit No. 9 was
15 marked for identification.)

16 MR. HAWAL: Evan, 880.

17 BY MR. HAWAL:

18 Q Mr. Boggs, I've handed you what has been
19 marked as Plaintiffs' Exhibit 9, bearing Bates
20 stamp MCK-AGMS-0060000880.

■ [REDACTED]
■ [REDACTED]
■ [REDACTED]
■ [REDACTED]

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1 Do you recall this PowerPoint
2 presentation?

3 A I do.

4 Q Did you have a chance to review this
5 when you were preparing for this deposition with
6 your counsel?

7 A I --

8 MR. STANNER: Objection to the extent it
9 calls for privileged information.

10 BY MR. HAWAL:

11 Q Did you review this?

12 A I've looked at this document, yes.

13 Q As part of your preparation for this
14 deposition?

15 A I did.

16 Q And this was prepared -- what does
17 "Olive Branch" mean?

18 A Olive Branch is where the McKesson's
19 national redistribution center is. It's Olive
20 Branch, Mississippi.

21 Q Okay. And this would have been prepared
22 after you left the DEA?

23 A It would.

24 Q Did it contain information that you

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1 would have learned or become aware of when you
2 worked for the DEA?

3 A It did. It does.

4 Q Did you seek and obtain any clearance
5 from the DEA to make this presentation or put this
6 material together?

7 A I did not.

8 Q Now, when you reviewed this PowerPoint
9 presentation, did it appear to you to be correct
10 and accurate? Was there anything -- or was there
11 anything that stood out as being inaccurate or
12 that you deemed required correction?

13 A I --

14 MR. STANNER: You're asking -- I'm
15 sorry, Counsel, you're asking at the time it was
16 prepared or since then?

17 MR. HAWAL: No, when you -- when he
18 reviewed it in preparation for his deposition.

19 MR. STANNER: My mistake.

20 THE WITNESS: When I reviewed it, it
21 appeared to be an accurate representation of the
22 presentation that I gave.

23 BY MR. HAWAL:

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[REDACTED]

[illegible]

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1 use of prescription painkillers."

2 What did you mean by that statement?

3 A What I meant by that statement, which is
4 reflected in the -- the next slide, is an example
5 of a manufacturer who was involved in an
6 investigation or a settlement with the government
7 that was about the false or misleading of
8 OxyContin, which was specifically to Purdue
9 Pharma.

10 Q And the next page references Purdue
11 Pharma in a \$635 million fine that was imposed on
12 Purdue for misleading advertising about its
13 OxyContin product?

14 A That's correct.

15 Q And you -- you consider that to be one
16 of the causes of the opioid crisis in the United
17 States?

18 MR. STANNER: Object to the form of the
19 question.

20 THE WITNESS: I think it has a
21 contributing factor, yes.

22 BY MR. HAWAL:

23 Q And then the next page, you reference a
24 company, Cephalon, in a \$425 million fine, which

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■ [REDACTED] [REDACTED]

■ [REDACTED]

■ [REDACTED]

4 BY MR. HAWAL:

5 Q So are you saying that you do not agree
6 that as greater amounts of opioid pills are
7 diverted into the illicit marketplace, that the
8 probability is that the number of addictions and
9 deaths will increase?

10 MR. STANNER: Same -- same objection. I
11 think it --

12 MR. HAWAL: I understand. All you have
13 to do is say, "Objection," Andrew.

14 MR. STANNER: Okay.

15 MR. HAWAL: That would be appreciated,
16 because the rules require no speaking objections.

17 MR. STANNER: I'm just trying to be
18 helpful.

19 BY MR. HAWAL:

20 Q Sir?

21 MR. HAWAL: I understand. Thank you.

22 THE WITNESS: I -- I think there is a
23 correlation between diversion and -- and
24 associated problems with diversion.

1 BY MR. HAWAL:

5 A I believe that's a fair statement, yes.

8 A I -- I don't recall.

[illegible]

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[REDACTED]

[illegible]

[illegible]

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[REDACTED]

21 Q Have you seen any studies or statistics
22 that reference the cost to communities, both
23 cities and counties and states, as it relates to
24 the economic impact of the opioid crisis?

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1 MR. STANNER: Object to the form.

2 THE WITNESS: Not that I recall

3 specifically that, no.

4 BY MR. HAWAL:

Figure 1. The effect of the number of trials on the mean accuracy of the responses ($n = 10$) as a function of the number of items ($n = 8$). Error bars represent standard error of the mean.



Figure 1

[illegible]

82

[illegible]

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[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13 BY MR. HAWAL:

14 Q I mean, for example, if a small
15 community in a given state that has, you know, 600
16 adults -- you know, a population of 600 adults and
17 is getting hundreds of thousands of opioid pills
18 provided to one pharmacy in such a small
19 community, that would indicate to you an example
20 of an exorbitant amount of pills going to a
21 potentially suspicious customer. Fair?

22 A It could be, yes.

[REDACTED]

[REDACTED]

[illegible]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9 BY MR. HAWAL:

10 Q I'm not -- I'm not saying automatically,
11 but generally speaking, would you agree that an
12 exorbitant amount going to a small community that
13 is also in the epicenter of diversion, that that
14 would be consistent with a greater degree of harm?

15 A I think it requires a greater -- you
16 know, more diligence to determine what's going on
17 and what the factors are there, and maybe it's
18 diversion or maybe there's a legitimate reason.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[illegible]

18 MR. STANNER: Object to the form.

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1 that criminal scheme that may not be applicable to
2 other types of schemes or other day-to-day
3 operations of regular pharmacies or practitioners.

4 BY MR. HAWAL:

5 Q Well, sir, if a -- if a distributor in
6 2005 was aware that these red flags were occurring
7 in a given community or related to a given
8 customer, should these have been red flags in 2005
9 as well as they were in 2013?

10 MR. STANNER: Object to the form.

11 MR. SATIN: And objection. Don't answer
12 that if you're going to disclose non-public
13 information that you obtained while at the DEA.

14 THE WITNESS: I think that they are red
15 flags, yes.

16 BY MR. HAWAL:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[illegible]

Golkow Litigation Services

[illegible]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

17 BY MR. HAWAL:

18 Q Well, it could have been an industry

19 practice earlier than that. There's nothing

20 unique about setting thresholds that coincides

21 with 2006 and 2007. True?

22 MR. STANNER: Object to the form.

23 THE WITNESS: It -- it's one methodology

24 to identify and report suspicious orders. There

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1 may be others.

2 (Plaintiffs' Exhibit No. 10 was
3 marked for identification.)

4 BY MR. HAWAL:

5 Q Mr. Boggs, I'm going to hand you what's
6 been marked as Exhibit 10. This is 301,
7 Operations Manual.

8 Mr. Boggs, I take it you've seen
9 McKesson's Operations Manual for the Controlled
10 Substance Monitoring Program?

11 A I have.

12 Q If you look at page 13 of 16, and the
13 numbering is at the top right-hand corner, this --
14 is this the -- this is the manual for the
15 Controlled Substance Monitoring Program that was
16 enacted as a part of McKesson's obligations with
17 its 2008 settlement?

18 MR. STANNER: Object to the form of the
19 question, foundation.

20 THE WITNESS: It -- it was the -- the
21 program for -- that was instituted in 2008 for --

22 BY MR. HAWAL:

■ ■ [REDACTED]
■ [REDACTED]

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[REDACTED]

18 MR. STANNER: Object to the form of the
19 question. Calls for speculation, hearsay,
20 foundation.

21 THE WITNESS: I don't agree with the
22 characterization of that. I think that the intent
23 is to make sure that we're clear and that there's
24 not a -- a way to misconstrue what's being written

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1 so that someone -- a third party that may not know
2 anything about what transpired would -- would
3 understand it with -- with some clarity.

4 BY MR. HAWAL:

5 Q Well, let's go to the next highlighted
6 bullet point. It says: "Refrain from using the
7 word 'suspicious' in communications. Once
8 McKesson deems an order and/or customer
9 suspicious, McKesson is required to act. This
10 means all controlled substances sales to that
11 customer must cease, and the DEA must be
12 notified."

13 As a former DEA representative, does it
14 trouble you that McKesson is formally instructing
15 its employees to refrain from using the word
16 "suspicious" in communications because of the
17 obligation that follows identifying an order as
18 suspicious?

19 MR. STANNER: Object to the form of the
20 question on several bases. I'll avoid a lengthy
21 objection.

22 BY MR. HAWAL:

23 Q Does that trouble you, sir?

24 A I think with my understanding and